

United States District Court  
Central District of California

OMRI MERON,

Plaintiff,

v.

GREEN TREE MORTGAGE CO.;

GREEN TREE SERVICING, LLC; RBS

CITIZENS; and DOES 1–100, inclusive,

Defendants.

Case № 2:15-cv-06075-ODW (MRWx)

**ORDER DISMISSING ACTION**

**I. INTRODUCTION**

On October 9, 2015, the Court dismissed Plaintiff Omri Meron’s Complaint against Defendant Green Tree Servicing LLC without leave to amend. (ECF No. 18.) The Court also ordered Plaintiff to show cause, no later than October 23, 2015, why Defendants Green Tree Mortgage Co. and RBS Citizens should not be dismissed for lack of prosecution. (ECF No. 17.) To date, Plaintiff has not filed a proof of service of summons for either defendant, nor have they shown cause as to why service has not been effected. Consequently, the Court **DISMISSES** the action for failure to prosecute and failure to comply with court orders.

**II. FACTUAL BACKGROUND**

The following summarizes the facts that the Court is able to discern from

1 Plaintiff's oft-incoherent Complaint. Plaintiff is the owner of real property located in  
 2 Los Angeles, California. (Compl. ¶ 1.) Defendants Green Tree Mortgage Co., Green  
 3 Tree Servicing LLC, and RBS Citizens are the owners of a junior mortgage on  
 4 Plaintiff's property. (*Id.* ¶¶ 5, 6.) At some point, Plaintiff began suffering "economic  
 5 difficulties," and "reached out" to Defendants to help him "retain the subject home"  
 6 by modifying the loan. (*Id.* ¶¶ 5, 6, 9.) Defendants rejected Plaintiff's request. (*Id.*  
 7 ¶ 12.) Defendants then allegedly made harassing calls to Plaintiff and threatened to  
 8 foreclose on his home. (*Id.* ¶¶ 12–13.) Defendants also allegedly violated a consent  
 9 decree entered against them in another action, although it is unclear how that relates to  
 10 Plaintiff's claims. (*Id.* ¶¶ 10–11.) Finally, Plaintiff alleges that Defendants engaged  
 11 in a "shell game," in which Defendants promised to modify the loan on condition that  
 12 Plaintiff was not in default on that loan. (*Id.* ¶ 22.)

13 On June 30, 2015, Plaintiff filed this action in the Los Angeles Superior Court.  
 14 (ECF No. 1-1.) On August 11, 2015, Defendant Green Tree Servicing LLC  
 15 ("Defendant") removed the action to this Court. (ECF No. 1.) On August 17, 2015,  
 16 Defendant Green Tree Servicing LLC moved to dismiss Plaintiff's Complaint. (ECF  
 17 No. 10.) On October 9, 2015, the Court granted the motion without leave to amend.  
 18 (ECF No. 18.) The Court also ordered Plaintiff to show cause, no later than October  
 19 23, 2015, why Defendants Green Tree Mortgage Co. and RBS Citizens should not be  
 20 dismissed for lack of prosecution. (ECF No. 17.) To date, Plaintiffs have not filed a  
 21 proof of service of summons for either remaining defendant, nor have they shown  
 22 cause as to why they have not served them with the Complaint.

### 23 III. LEGAL STANDARD

24 A district court has authority to *sua sponte* dismiss an action for failure to  
 25 prosecute or failure to comply with court orders. Fed. R. Civ. P. 41(b); *Link v.*  
 26 *Wabash R.R.*, 370 U.S. 626, 629–31 (1962); *Hells Canyon Pres. Council v. U.S.*  
 27 *Forest Serv.*, 403 F.3d 683, 689 (9th Cir. 2005). A court must weigh five factors  
 28 when determining whether to dismiss a case under Rule 41(b): (1) the public's interest

1 in expeditious resolution of litigation; (2) the court's need to manage its docket; (3)  
 2 the risk of prejudice to the defendants; (4) the availability of less drastic alternatives;  
 3 and (5) the public policy favoring disposition of cases on their merits. *Ferdik v.*  
 4 *Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992). These factors exist as a framework  
 5 for the Court's consideration before dismissing a case, but "are not a series of  
 6 conditions precedent before the judge can do anything." *In re Phenylpropanolamine*  
 7 *(PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006).

#### 8 IV. DISCUSSION

9 The Court finds that each factor weighs in favor of dismissal. As to the first  
 10 factor, "[t]he public's interest in expeditious resolution of litigation always favors  
 11 dismissal." *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002). As to the  
 12 second factor, the Court must "manage its docket without being subject to routine  
 13 noncompliance of litigants." *Id.* Here, Plaintiff has not served two of the three named  
 14 defendants, and has failed to show cause for not doing so. Such delay and clear  
 15 noncompliance with court orders substantially hinders the Court from discharging its  
 16 duty to bring cases to a speedy conclusion, and thus this weighs in favor of dismissal.

17 As to the third factor, "a defendant must establish that plaintiff's actions  
 18 impaired defendant's ability to proceed to trial or threatened to interfere with the  
 19 rightful decision of the case." *Id.* Here, this case was filed in the Los Angeles  
 20 Superior Court in June 2015, and was removed to this Court in August 2015. (ECF  
 21 Nos. 1, 1-1.) Yet Plaintiff still has not even served the Complaint on two of the three  
 22 named defendants. "Unnecessary delay inherently increases the risk that witnesses'  
 23 memories will fade and evidence will become stale." *Pagtalunan*, 291 F.3d at 642.  
 24 Moreover, Plaintiff offers no explanation for the delay, despite being ordered by the  
 25 Court to do so. The remaining Defendants should not have this matter hanging over  
 26 their heads while Plaintiff essentially ignores the case. Thus, this factor also weighs in  
 27 favor of dismissal.

28 The fourth factor—availability of less drastic sanctions—also counsels

1 dismissal. Plaintiff submitted an untimely opposition to Defendant Green Tree  
2 Servicing LLC's motion to dismiss, which did little more than regurgitate the Rule  
3 12(b)(6) standard and did not substantively respond any arguments that Defendant  
4 made. (ECF No. 14.) After granting the motion without leave to amend, the Court  
5 ordered Plaintiff to show cause for his failure to prosecute this matter as to the  
6 remaining Defendants. Plaintiff ignored the Order. It is therefore clear to the Court  
7 that Plaintiff has little interest in prosecuting his case (let alone diligently prosecuting  
8 the case), and that less drastic alternative sanctions would not inspire Plaintiff to do  
9 so.

10 Finally, "[p]ublic policy favors disposition of cases on the merits. Thus, this  
11 factor weighs against dismissal." *Pagtalunan*, 291 F.3d at 642. However, this factor  
12 alone will not prevent dismissal where all other factors weigh in favor of dismissal.  
13 *Id.*

#### 14 V. CONCLUSION

15 For the reasons discussed above, the Court **DISMISSES** the action in its  
16 entirety under Rule 41(b). The Clerk of the Court shall close the case.

17  
18 **IT IS SO ORDERED.**

19  
20 November 24, 2015



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23 **OTIS D. WRIGHT, II**  
24 **UNITED STATES DISTRICT JUDGE**